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November 6, 1978

TO: ALL INTERESTED PARTIES
FROM: AIR POLLUTION CONTROL OFFICER
SUBJECT: PUBLIC HEARING TO ESTABLISH A RULE FOR
 UPSET/BREAKDOWN CONDITIONS

On January 3, 1979, this District will hold a public hearing to consider a Staff proposal for an upset/breakdown rule.

Recently the EPA disapproved all upset/breakdown rules in this State because they were not consistent with the requirements of the Clean Air Act. The major concern was that existing rules could allow emissions which would interfere with the attainment or maintenance of air quality standards.

Attached is a draft of the Staff proposal to be presented at the January 3rd public hearing. Interested parties are requested to submit any written comments prior to December 15, 1978, so District Staff can give them the appropriate consideration.

DJC:tmc
 Attachment

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BAY AREA AIR QUALITY MANAGEMENT DISTRICT

REGULATION 13

BREAKDOWN CONDITIONS; EMERGENCY VARIANCES

1. Definition

For the purposes of this rule, a breakdown condition means an unforeseeable failure or malfunction of any air pollution control equipment or related operating equipment which causes a violation of any emission limitation or restriction prescribed by these rules and regulations, or by State law, ~~or-any-in-stack-continuous-monitoring equipment~~ where such failure or malfunction:

- a. is not the result of intent, neglect, or disregard of any air pollution control law or rule or regulation;
- b. is not the result of improper maintenance;
- c. does not constitute a nuisance;
- d. is not a recurrent breakdown of the same equipment.

2. Breakdown Procedures

- a. The owner or operator shall notify the air pollution control officer of any occurrence which constitutes a breakdown condition; such notification shall identify the time, specific location, equipment involved, and (to the extent known) the cause(s) of the occurrence, and shall be ~~given-as-seen-as-reasonably-possible,-but no-later-than-one-(1)-hour-after-its-detection~~ reported to the District office immediately with due consideration to public safety, including the hazard of fire and explosion.

- b. The air pollution control officer shall establish written procedures and guidelines, including appropriate forms for logging of initial reports, investigation, and enforcement follow-up, to ensure that all reported breakdown occurrences are handled uniformly to final disposition.
- c. Upon receipt of notification pursuant to subparagraph 2.a. the air pollution control officer shall promptly investigate and determine whether the occurrence constitutes a breakdown condition. If the air pollution control officer determines that the occurrence does not constitute a breakdown condition, the air pollution control officer may take appropriate enforcement action, including, but not limited to, seeking fines, an abatement order, or an injunction against further operation.

3. Disposition of Short-Term Breakdown Conditions

- a. An occurrence which constitutes a breakdown condition, and which persists only until the end of the production run or 24 hours, whichever is sooner (except for continuous monitoring equipment, for which the period shall be ninety-six-(96)-hours), shall constitute a violation of any applicable emission limitation or restriction prescribed by these rules and regulations; however, the APCO may elect to take no enforcement action if the owner or operator demonstrates to his satisfaction that a breakdown condition exists and the following requirements are met:

- (1) The owner or operator submits the notification required by subparagraph 2.a.; and
- (2) the owner or operator immediately undertakes appropriate corrective measures and comes into compliance, or elects to shut down for corrective measures before commencement of the next production run or within 24 hours, whichever is sooner {except for continuous monitoring equipment for which the period shall be ninety-six-(96)-hours}. If the owner or operator elects to shut down rather than come into immediate compliance, immediate steps must be taken wherever possible to minimize the impact of the breakdown within the 24-hour period.
- (3) The breakdown does not interfere with the attainment and maintenance of any national ambient air quality standard.

b. An occurrence which constitutes a breakdown condition shall not persist longer than the end of the production run or 24 hours, whichever is sooner {except for continuous monitoring equipment, for which the period shall be ninety-six-(96)-hours}, unless the owner or operator has obtained an emergency variance.

4. Emergency Variance Procedures

- a. If the breakdown condition will either require more than twenty-four (24) hours to correct or persist longer than the end of the production run {except for continuous

monitoring equipment, for which the period shall be ninety-six-(96)-hours), the owner or operator may, in lieu of shutdown, request the air-pollution-control officer clerk of the hearing board to commence the emergency variance procedure set forth in subparagraph b. below.

- b. Upon receipt of a request for any emergency variance, the air-pollution-control-officer clerk of the hearing board shall contact the chairperson of the hearing board, or other designated member(s) of the hearing board, to establish a time and place for consideration of the request. The air-pollution-control-officer clerk of the hearing board shall inform the owner or operator of the source and the air pollution control officer of such time and place. During consideration of the emergency variance, the air pollution control officer shall recommend whether an emergency variance should be granted, and the owner or operator of the source shall be entitled to present testimony and evidence. The burden shall be on the owner or operator to establish that a breakdown condition exists. Thereafter, the chairperson or other designated member(s) may, without notice or hearing, grant or deny an emergency variance. Reasonable conditions may be included in the variance. The chairperson or other designated member(s) shall, within five working days, issue written order confirming the decision, with appropriate findings.

- c. No emergency variance shall be granted unless the chairperson or other designated member(s) determines that:
 - (1) the occurrence constitutes a breakdown condition;
 - (2) continued operation is not likely to create an immediate threat or hazard to public health or safety; and
 - (3) the requirements for a variance set forth in Health and Safety Code Sections 42352 and 42353 have been met.
 - (4) the continued operation in a breakdown condition will not interfere with the attainment or maintenance of the national air quality standard.
- d. At any time after an emergency variance has been granted, the air pollution control officer may request that the chairperson or designated member(s) reconsider and revoke, modify or further condition the variance if the air pollution control officer has good cause to believe that:
 - (1) continued operation is likely to create an immediate threat or hazard to public health or safety;
 - (2) the owner or operator is not complying with all applicable conditions of the variance;
 - (3) a breakdown condition no longer exists; or
 - (4) final compliance is not being accomplished as expeditiously as practicable.

The procedures set forth in subparagraph d.2. shall govern any further proceedings conducted under this subparagraph.

e. An emergency variance shall remain in effect only for as long as necessary to repair or remedy the breakdown condition, but in no event after a properly noticed hearing to consider an interim or 90-day variance has been held, or fifteen (15) days from the date of the subject occurrence, whichever is sooner.

5. Reporting Requirements

Within one-week thirty days after a breakdown occurrence has been corrected, the owner or operator shall submit a written report to the air pollution control officer which includes:

- a. a statement that the occurrence has been corrected, together with the date of correction and proof of compliance;
- b. a specific statement of the reason(s) or cause(s) for the occurrence sufficient to enable the air pollution control officer to determine whether the occurrence was a breakdown condition.
- c. a description of the corrective measures undertaken and/or to be undertaken to avoid such an occurrence in the future {the-air-pollution-control-officer-may, at-the-request-of-the-owner-or-operator,-for-good cause,-extend-up-to-30-days-the-deadline-for-submitting the-description-required-by-this-subparagraph}.
- d. an estimate of the emissions caused by the occurrence; and
- e. pictures of the equipment or controls which failed, if available.

6. Burden of Proof

The burden shall be on the owner or operator of the source to provide sufficient information to demonstrate that a breakdown did occur. If the owner or operator fails to provide sufficient information, the air pollution control officer shall undertake appropriate enforcement action.

7. Failure to Comply with Reporting Requirements

Any failure to comply, or comply in a timely manner, with the reporting requirements established in subparagraphs 2.a. and 5.a. through 5.e. of this rule shall constitute a separate violation of this rule.

8. False Claiming of Breakdown Occurrence

It shall constitute a separate violation of this rule for any person to file with the air pollution control officer a report which falsely, or without probable cause, claims that an ~~eeeurrenee-is-a-breakdown-eeeurrenee~~ excessive emission is the result of a breakdown.

9. Hearing Board Standards and Guidelines

The hearing board shall adopt standards and guidelines consistent with this rule to assist the chairperson or other designated member(s) of the hearing board in determining whether to grant or deny an emergency variance.
~~and-to-assist-the-air-pollution-control-officer-in-the-enforcement-of-this-rule.~~

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